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09/910,203	07/20/2001	Boris E. Goldman	POM-0001	1470

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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/910,203

Applicant(s)

GOLDMAN ET AL.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 1-8 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 9-15, 17-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-8,16, drawn to a container with a radiant barrier classified in class 220, subclass 592.2.
- II. Claims 9-15,17-20, drawn to the method of using deformable food bag, classified in class 426, subclass 392.

2. The inventions are distinct, each from the other because:

3. Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are a container with a radiant barrier , top, and base and a method of using a deformable bag. The method has a different mode of operation than the container since the method requires a bag, not a container with a top and base.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Christopher Boehm on September 11, 2003 a provisional election was made with traverse to prosecute the invention of II. Examiner notes that the original restriction requirement over the phone erroneously included claim 16 in group II. However, claim 16 clearly

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depends from claim 1, and is included in group I. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-8,16 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

6. Claim 17 is objected to because of the following informalities: Claim 17 depends on claim 17. Appropriate correction is required. For examination purposes, it is assumed that claim 17 depends from claim 9 since it recites "the disposable food container". Additionally, it is noted that claim 17 lacks antecedent basis for "said insulated layer". For examination purposes, the claim will read "an insulated layer".

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 9-13,17 are rejected under 35 U.S.C. 102(b) as being anticipated by Raszewski et al. (US 4987997).

9. Raszewski et al. teach a bag having an aperture on one side with a flap that is sealed with an adhesive (Column 2, lines 20-32), an integral thermal

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convection barrier in the form of a foamed layer, which may include polyethylene as recited in claim 17 (Column 1, lines 50-59, Column 3, lines 34-49, Column 51-62), and an outer radiant barrier of metalized polymer that is highly reflective material (i.e. at least 60%) as recited in claims 9-11 (Column 1, line 54 to Column 2, line 4), and the radiant barrier may be polyethylene, as recited in claim 12, wherein the metalized portion could be 25-100 microns thick, or anywhere from 0.0009 to 0.0039 inches as recited in claim 13 (Column 2, lines 55-68).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raszewski et al. (US 4987997), further in view of Sheth et al. (US 5055338)

12. Raszewski et al. teach either metalized polyethylene or PET from 0.0009 to 0.0039 inches and that the intended use is to protect items from external electric fields and static electricity (Column 1, lines 30-59), but are silent in teaching oriented polypropylene (OPP). Sheth et al. are relied as evidence of the known properties of metalized films. Sheth et al. teach in some applications metalized films used in packages to provide electrical conductivity which helps to

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control static electricity ,and specifically note that metalized OPP films are notoriously well known for this use (Column 1, line 67 to Column 2,line 8, Column 2, line 35-36). Therefore it would have been obvious to modify Raszewski et al. and use a metalized OPP layer 0.0009-0.0039 inches thick since Raszewski et al. teach the bag contents must be protected from static electricity and Sheth et al. also teach metalized films are used to provide a static electricity barrier in packages, with metalized OPP film being well known possessing static electricity barrier properties. Thus, one would have been substituting one type of metalized film for another for the same purpose: providing a static electricity barrier for a package.

13. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh (US 3428103) in view of Peebles et al. (US 6471065 B1) and Cliff (US 6109440).

14. Regarding claim 18, Walsh teaches a flexible food bag comprising an aperture on one side of the bag, an integral thermal convection barrier, and a reflective radiant barrier (Figures, Abstract, Column 1, lines 35-65, Column 2, lines 26-46, 47-56). Walsh further teaches the bag is used for delivering pizza held in a box, a box is inserted and removed from the bag through the aperture, and that the aperture is sealed with a suitable closure, such as a zipper(Column 2, lines 40-46 57-66). However, Walsh is silent in teaching a flap with adhesive and a protective covering on the adhesive that is removed to seal the flap.

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15. Peeples et al. are relied on as evidence of the conventionality of an insulated pizza bag with a sidewall aperture having an adhesive flap closure (Abstract, Column 2, lines 3-8).

16. Cliff is relied on as evidence of the conventionality of providing a protective covering on an adhesive flap closure to prevent premature sealing and is removed to seal the flap (Column 4, lines 4-9).

17. Therefore, it would have been obvious to modify Walsh and include an adhesive flap closure since one would have been substituting one suitable closure for another for the same purpose: sealing a pizza box in an insulated pizza carrier bag. It would have been further obvious to include a protective cover on the adhesive strip since this prevents premature sealing of the flap.

18. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Walsh (US 3428103) in view of Peeples et al. (US 6471065 B1) and Cliff (US 6109440) as applied to claim 18 above further in view of Zion (US 4984734).

19. Walsh is silent in teaching the pizza box is vented. However, Zion is relied as evidence of the conventionality of providing vents in a pizza box to remove moisture and maintain crispness (Column 5, lines 40-45). Therefore it would have been obvious to provide vents in the box of Walsh since venting moisture from the pizza helps to maintain crispness and one would have been substituting one conventional pizza box design for another.

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20. Claims 18 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gatward (US 4515840) in view of. Peeples et al. (US 6471065 B1) and Cliff (US 6109440).

21. Gatward teaches materials suitable for pizza pies and food storage bags (Column 1, lines 30-34) comprising thermal and radiant barriers wherein the radiant barrier comprises a 8-35 micron polyethylene layer (Column 1, line 55 to Column 2 line 40) which may be metalized (Column 1, lines 30-37), and thus provides a .00125 inch layer of metalized material, as recited in claim 20.

Gatward teaches a flap (Abstract), but is silent in teaching the flap comprises an adhesive with a protective covering as recited in claim 18.

22. Peeples et al. are relied on as evidence of the conventionality of an insulated pizza bag with a sidewall aperture having an adhesive flap closure that extends away from the bag (Abstract, Column 2, lines 3-8 Figures).

23. Cliff is relied on as evidence of the conventionality of providing a protective covering on an adhesive flap closure to prevent premature sealing and is removed to seal the flap (Column 4, lines 4-9).

24. Therefore, it would have been obvious to modify Gatward and include an adhesive flap closure since one would have been substituting one flap sealing method for another for the same purpose: sealing a pizza in an insulated carrier bag. It would have been further obvious to include a protective cover on the adhesive strip since Cliff teaches this would prevent premature sealing of the flap.

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Conclusion

25. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Skamser (US 4802233) teaches a flap closure for thermally insulated pizza bags. Workman (US 4357313) teaches thermally insulated pizza bags with a metalized polyester. Scott (US 64508685 B1) teaches pizza delivery bags comprising metalized polyester and non-thermoplastic material. Thomas et al. (US 6019511) teaches insulated food bags comprising polyethylene layers of 0.2 to 20 mils that may be metalized.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

28. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen
Examiner
Art Unit 1761



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